

The Examiner has restricted the pending claims into four groups. Claims 1-19 (Group I), Claims 20-24 (Group II), and claims 25-28 (Group III) have been characterized as being drawn to various methods of “establishing a patient-specific optimally effective dose for administration of a radiopharmaceutical to a patient”. The claims of each of Groups I, II, and III are classified in class 702, subclass 19. Claims 29-82 (Group IV) have been characterized as being drawn to “. . . a computer system, a computer usable medium, a data storage device readable by a machine . . .” classified in class 360, subclass 1. Applicant traverses the restriction of a portion of the claims.

It is Applicant’s position that the invention of the claims of Group I should be examined on the merits with the invention of claims of Group III, or alternatively, with the claims of both Groups II and III. The Examiner has not found a provision under MPEP §806.05 for distinguishing between method claims 1, 20, and 25, but has simply described them as “functionally different”. It cannot be said, however, that the methods are completely unconnected in design, operation, and effect. Applicant submits that the methods of Groups I, II, and III give the same or related results, i.e. a patient-specific dose is established by practice of any of these methods.

Further, since the claims of Groups I, II, and III are classified under the same class and subclass, search and examination of the claims of these three groups should not be especially burdensome. Since the classification is the same and the field of search is the same, there is no clear indication of why such inventions should be divided. The Examiner has justified the restriction stating “each group is different from the other in the determination and use of the patient’s mass” and the “the searches for the methods are not co-extensive, and the subject matter is divergent.” However, such statements do not demonstrate how the search for Group I require search in places where no pertinent art to Groups II or III exists. Each of the outlined methods share many steps in common: determining a maximum tolerated dose, selecting a mass of the patient, determining the activity hours for the radiopharmaceutical, and determining a residence time. These steps, in combination with several others, permit one to establish the optimally effective dose. Thus, Applicant submits that examination of any of Groups I, II or III will require coextensive searches. Accordingly, Applicant requests the Examiner to withdraw the division of Groups I, II and III, or alternatively to withdraw the division of Groups I and

III. The claims of Group I are elected, however, pending the consideration of this traversal.

Additionally, the Examiner has stated that the claims in Group I are drawn to four patentably distinct species of the claimed invention. The Examiner identifies claims 10, 13, 15 and 18 as presenting patentably distinct mathematical solutions to the residence time, and requires election of a single disclosed species for prosecution on the merits. Applicant elects the species of claim 10. Within Group I, Species 1 is represented by claims 10, 11, and 12.

Applicant respectfully calls the Examiner's attention to 37 CFR 1.141, which provides that more than one species of an invention may be claimed provided the application also includes one allowable claim generic to the claimed species. Applicant reserves the right to present the species embodied in claims 13, 15 and 18 upon allowance of the generic claim.

Thus, the claims of Group I, Species 1 are elected. Claims 1-28 are pending and the remaining claims (claims 29-82) are withdrawn. Although reconsideration of the restriction requirement is requested, claims 1-12 and 19 are clearly pending and under examination.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (415) 693-2120.

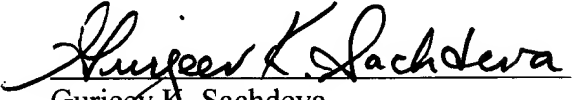
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